

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**CYNTHIA DIXON, individually, and on behalf)
of all others similarly situated,)**

Plaintiff,

v.

**THE WASHINGTON & JANE SMITH HOME,)
et al.,)**

Defendants.)

Case No. 1:17-cv-08033

Hon. Matthew F. Kennelly

**PLAINTIFF’S UNOPPOSED MOTION FOR LEAVE TO AMEND
CLASS ACTION SETTLEMENT AGREEMENT**

Plaintiff Cynthia Dixon, by and through counsel, respectfully request this Honorable Court grant the Parties leave to amend the Class Action Settlement Agreement (“Settlement Agreement”) preliminarily approved by the Court on May 14, 2019. In support of this Motion, the Parties state as follows:

1. On September 28, 2017, Plaintiff filed a class action lawsuit against Defendants the Washington & Jane Smith Home, d/b/a Smith Senior Living, Washington & Jane Smith Community – Chicago, Washington & Jane Smith Community – Beverly, d/b/a Smith Village, Washington & Jane Smith Community – Orland Park, d/b/a Smith Crossing, Kevin McGee, and Marti Jatis (collectively referred to herein as “Smith”) and Kronos Incorporated (“Kronos”) (Smith and Kronos are collectively referred to herein as “Defendants”) alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* and common law negligence, and individual wage violations and retaliation against Smith in the Circuit Court of Cook County,

Illinois, Chancery Division. On November 6, 2017, Kronos removed this action to the United States District Court for the Northern District of Illinois.

2. On December 19, 2018, the Parties participated in a formal, full-day mediation session with Judge Stuart Palmer (Ret.) at JAMS in Chicago, Illinois. The Parties continued to have settlement discussions through Judge Palmer, culminating in another partial-day mediation session with Judge Palmer at JAMS on March 7, 2019.

3. Following these negotiations, the Parties reached a Settlement Agreement, the terms of which were submitted to the Court for Preliminary Approval on May 9, 2019. (D.E. 79).

4. On May 14, 2019, the Court granted Preliminary Approval of the Settlement Agreement. (D.E. 83).

5. On May 17, 2019, counsel for the Smith Defendants informed Class Counsel that there had been an error in determining the class size. Specifically, 309 individuals had been included in the putative class that should not have been. Of these 309 non-class members: 251 individuals signed a BIPA consent form prior to enrollment in the Biometric Timekeeping System at issue; 28 individuals were never enrolled in or used the Biometric Timekeeping System at issue; and 30 individuals were duplicate entries on the class list. Therefore, the total number of eligible class members in this matter is 1,381, not 1,690.

6. The Parties subsequently worked together to renegotiate the terms of the Settlement Agreement. The Amended Settlement Agreement is attached here as Exhibit 1.

7. Per the terms of the Amended Settlement Agreement, Smith or their insurers shall pay to the Settlement Administrator the total sum of One Million Three Hundred and Fifty-Six Thousand Dollars (\$1,356,000.00) to create a non-reversionary Settlement Fund. (Exhibit 1 ¶ 44(a)).

8. The Settlement Fund shall be used to pay (i) Settlement Class Members' claims; (ii) a Service Award to the Class Representative (\$10,000.00); (iii) Plaintiff's individual claims against Smith (\$30,000.00); (iv) the Fee Award (not to exceed thirty-three percent (33%) of the Settlement Fund);¹ and (v) the Administrative Expenses (not to exceed \$20,000.00). When you deduct the amount paid to the Named Plaintiff for her individual claims, the gross amount of the Settlement Fund to be paid to Settlement Class Members is One Million Three Hundred and Twenty-Six Thousand Dollars (\$1,326,000.00). (*Id.* ¶ 44(d)).

9. Each Class Member employed by Smith from September 28, 2015 to the date of Preliminary Approval of the Amended Settlement Agreement who does not timely and validly opt out of the Settlement shall receive a check equal to the gross amount of \$1,085.00, less Administrative Expenses paid to the Settlement Administrator, the Service Award to the Named Plaintiff, and a Fee Award to Class Counsel. (*Id.* ¶¶ 45, 51(a)). This is an increase from the previously approved gross amount of \$1,000 per Class Member.

10. Each Class Member employed by Smith from September 28, 2012 to September 27, 2015 who does not timely and validly opt out of the Settlement shall receive a check equal to the gross amount of \$768.12, less Administrative Expenses paid to the Settlement Administrator, the Service Award to the Named Plaintiff and a Fee Award to Class Counsel. (*Id.* ¶¶ 46, 51(b)). This is an increase from the previously approved gross amount of \$682.24 per Class Member.

11. All other terms of the Amended Settlement Agreement remain the same.

¹ As a result of the revised agreement, Plaintiffs' counsel is receiving less in total attorney's fees from \$511,500 to \$451,548.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant her Unopposed Motion for Leave to Amend the Settlement Agreement and enter the attached Proposed Order.

Date: June 4, 2019

Respectfully Submitted,

/s/ Haley R. Jenkins

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COUNSEL FOR PLAINTIFF AND THE CLASS

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on June 4, 2019, I electronically filed the attached with the Clerk of the Court using the ECF system which will send such filing to all attorneys of record.

/s/ Haley R. Jenkins